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11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 **JUAN ANGEL MARTINEZ, JR.,**

C 07-4684 CRB (PR)

16 Plaintiff,

17 v.

18 **JAMES E. TILTON, et al.,**

19 Defendants.

20  
21 **DEFENDANTS' NOTICE OF MOTIONS AND MOTIONS TO DISMISS**  
22 **AND FOR SUMMARY JUDGMENT**  
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17 v.

18 **JAMES E. TILTON, et al.,**

19 Defendants.  
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C 07-4684 CRB (PR)

**DEFENDANTS' NOTICE OF  
MOTIONS AND MOTIONS  
TO DISMISS AND FOR  
SUMMARY JUDGMENT**

21 TO PRO SE PLAINTIFF JUAN ANGEL MARTINEZ, JR.:

22 PLEASE TAKE NOTICE that Defendants Tilton, Scavetta, Horel, Silva, Vanderhoofven,  
23 McGuyer, Enos, Barneburg, Countess, Milligan, and Estes (Defendants) move under Federal  
24 Rule of Civil Procedure 12(b)(6) to dismiss Martinez's claims concerning notice of confiscated  
25 mail and the point-of-origin stamping policy, on the grounds that Martinez fails to allege any  
26 constitutional violation.

27 In addition, Defendants move for summary judgment under Federal Rule of Civil Procedure  
28 56 on the grounds that: (1) there is no genuine issue as to any material fact; (2) there was no

Defs.' Mots. Dismiss & Summ. J.

*Martinez v. Tilton, et al.*  
C 07-4684 CRB (PR)

1 violation of Plaintiff's First Amendment rights; and (3) Defendants are entitled to qualified  
2 immunity because their actions were lawful.

3 The dispositive motions are based on this notice of motions and motions, the accompanying  
4 memorandum of points and authorities, the supporting declaration, all pleadings, exhibits, and  
5 papers on file in this action, and any other matters properly before the Court.

## 6 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 8 **Statement of Issues**

9 Inmate Martinez is a prison-gang associate held by the California Department of Corrections  
10 and Rehabilitation (CDCR) in the Security Housing Unit (SHU) at Pelican Bay State Prison  
11 (PBSP). CDCR reviews incoming inmate mail, and has confiscated three letters addressed to  
12 Martinez. CDCR also stamps pages of outgoing inmate mail from the SHU to help prevent  
13 prison-gang members from communicating with each other despite isolation in a SHU.

14 1. Does Martinez state a constitutional claim by asserting that he received notice of three  
15 confiscated letters on the wrong form?

16 2. Does Martinez state a constitutional claim by asserting that his outgoing mail is  
17 stamped?

18 3. Was Martinez notified of three incoming letters that were addressed to him and  
19 confiscated, and was he able to appeal their confiscation to a prison official other than the one  
20 who made the initial confiscation decision?

21 4. Does PBSP's policy of stamping outgoing inmate mail from the SHU reasonably relate  
22 to penological concerns, where the stamps help prevent prohibited inmate-to-inmate  
23 communications that threaten prison security and the lives of correctional officers and other  
24 inmates?

25 5. Are Defendants entitled to qualified immunity from Martinez's First Amendment  
26 claims concerning the sending and receipt of mail?

27 //

28 //

**Statement of the Case**

Juan Angel Martinez, an inmate with CDCR, filed a complaint with seventeen causes of action on September 11, 2007 for alleged constitutional violations involving his sending and receipt of mail. (Compl.; Order of Service 2–3.) He proceeds pro se in this action under 42 U.S.C. § 1983, and seeks injunctive relief and damages. (Compl. 1, 3P–R.)

On January 11, 2008, this Court found that Martinez arguably stated First Amendment claims concerning his right to send and receive mail, and to appeal the confiscation of his mail to an official other than the one who made the initial confiscation decision. (Order of Service 2–3.)

Defendants here file their motions to dismiss and for summary judgment.

**Statement of Facts**

1. Inmate Martinez is a prison-gang associate of the Mexican Mafia, and held by the CDCR in the SHU at PBSP. (*See* Decl. Roost Supp. Defs.’ Mot. Summ. J. (Decl. Roost) ¶ 7, Ex. F-1–2.)

2. CDCR has a four-level administrative-appeals process that permits its inmates to grieve “any departmental decision, action, condition, or policy which they can demonstrate as having an adverse affect upon their welfare.” Cal. Code Regs. tit. 15, § 3084.1(a). The four levels of appeal include: (1) an informal level, (2) a first formal level of review, (3) a second-level review to the institution head or designated representative, and (4) a final third-level appeal to the Director of the CDCR or designated representative. *Id.* at § 3084.5. A decision at the Director’s level constitutes exhaustion of an inmate’s administrative remedies. *Id.* at § 3084.1(a).

3. Martinez has exhausted three administrative grievances concerning confiscation of incoming correspondence, identified by appeal-log numbers C-06-02404, C-07-00012, and C-07-00269. (Decl. Roost ¶¶ 3–5; Compl. 2(a).)

4. Inmates may receive notice of confiscated correspondence on either a form 1819 or 128-B. (Decl. McGuyer Supp. Defs.’ Mot. Summ. J. (Decl. McGuyer) ¶ 10.) The distinction is that correctional officers provide notice on a form 128-B when the incoming mail also serves as a



1 source item indicating prison-gang affiliation. (*Id.*) Specifically, a form 1819 includes  
 2 information identifying the sender and receiver, whether the mail is incoming or outgoing, and  
 3 why the mail is disapproved. (*Id.*) A form 128-B includes all the information on a form 1819,  
 4 and also adds further detail explaining why the letter implicates prison-gang association. (*Id.*)

5 5. Martinez received confiscation notice of the letter addressed by administrative  
 6 grievance C-06-02404 on a form 1819, which was authorized by Correctional Captain Silva.  
 7 (*See* Decl. Roost Ex. B-5.) During the course of exhausting his administrative grievance,  
 8 Martinez was interviewed at the first formal level by Correctional Lieutenant Vanderhoofven (*id.*  
 9 Ex. B-1), and his second-level response was reviewed and signed by Warden Horel (*id.* Ex. B-  
 10 10–11).

11 6. Martinez received confiscation notice of the letter addressed by administrative  
 12 grievance C-07-00012 on a form 128-B, which was authorized by Correctional Captain  
 13 McGuyer. (*See id.* Ex. C-9.) During the course of exhausting his administrative grievance,  
 14 Martinez was interviewed at the second formal level by Correctional Sergeant Barneburg, and the  
 15 second-level response was reviewed and signed by Warden Horel. (*Id.* Ex. C-3–5.)

16 7. Martinez received confiscation notice of the letter addressed by administrative  
 17 grievance C-07-00269 on a form 128-B, which was authorized by Correctional Captain  
 18 McGuyer. (*See* Decl. Roost Ex. D-1; *see also* Compl. Ex. 45<sup>1/</sup>.) During the course of exhausting  
 19 his administrative grievance, Martinez was interviewed at the second formal level by  
 20 Correctional Sergeant Barneburg, and the second-level response was reviewed and signed by  
 21 Warden Horel. (Compl. Ex. 43–44.) Ultimately this administrative grievance was reviewed at  
 22 the Director's Level by Appeals Examiner K.J. Allen and approved by the chief of the Inmate  
 23 Appeals Branch. (*See* Decl. Roost Ex. D-1.)

24 8. Prison-gang participants at PBSP, like Martinez (*id.* ¶ 7), are typically housed in a SHU  
 25 to isolate them from the general population and limit their communications, which—if they  
 26

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27 1. Defendants refer to precise page numbers from the Complaint's exhibit, which spans  
 28 forty-six pages, to ensure accurate identification of documents.

1 reached other inmates—could greatly endanger security by, for instance, coordinating and  
2 commanding assaults on correctional officers and other inmates (Decl. McGuyer ¶ 3).

3 9. PBSP's SHU consists of twenty-two units, and members of the same prison gang will  
4 typically be split among the units to prevent intra-gang communication. (*Id.*)

5 10. SHU inmates were circumventing the prohibition on inmate-to-inmate communications  
6 through two methods: (1) addressing correspondence to fictitious destinations, and placing  
7 another inmate's address as the return address for the bounced mailing; and (2) using  
8 intermediaries outside of prison to re-route all or parts of mail to other inmates. (*Id.* ¶ 5.)

9 11. Members of the Institutional Gang Investigations (IGI) Unit determined that the best  
10 method to stop these communications was to mark every page of outgoing PBSP-SHU mail, along  
11 with the envelope itself, with information identifying the mail's point of origin. (*Id.* ¶ 6.) These  
12 identifying stamps indicate origin not just from PBSP's SHU, but also from which of the twenty-  
13 two PBSP SHU units the mail originated. (*Id.*) The stamp therefore enables correctional officers  
14 checking incoming inmate mail to easily note if any part of a correspondence illicitly originated  
15 from an inmate at PBSP SHU, or even from a different unit within the PBSP SHU, cutting off  
16 inter-unit PBSP SHU communications as well. (*Id.*)

17 12. The IGI Unit's goal was to accomplish this point-of-origin marking in as clear but non-  
18 invasive a manner as possible. (*Id.*) For example, the point-of-origin stamp is in red ink, which  
19 contrasts with the prison-issued black ink used in correspondence by inmates. (*Id.* ¶ 7.) In  
20 addition, CDCR procured self-inking stamping tools to apply a uniform and minimal amount of  
21 red point-of-origin ink, to prevent smearing. (*Id.* ¶ 8.) Also, the red point-of-origin stamps are  
22 typically applied in a diagonal angle, to contrast further with inmates' black-ink writing. (*Id.* ¶  
23 7.) In addition, confidential inmate mail, like legal correspondence, is only stamped on the  
24 envelope. (*Id.*) Finally, photographs and drawings are only stamped on their back to avoid  
25 defacing the artwork. (*Id.* ¶ 8.)

26 13. The point-of-origin stamping policy has had a successful impact in stopping prison-  
27 gang communication over the approximately eighteen months that the policy has been in place.  
28 (*Id.* ¶ 9.)

Argument**I.****MARTINEZ FAILS TO RAISE ANY CONSTITUTIONAL CLAIM.****A. Martinez's Claim Concerning Three Confiscated Letters Must Be Dismissed Because No Constitutional Claim Is Raised.**

An inmate, when his mail is confiscated, is constitutionally entitled to notice of the confiscation decision, and to appeal the decision to a prison official other than the one making the initial confiscation decision. *See Frost v. Symington*, 197 F.3d 348, 353–54 (9th Cir. 1999); *Krug v. Lutz*, 329 F.3d 692, 697–98 (9th Cir. 2003). Martinez fails to state a First Amendment claim concerning the confiscation of three letters because his allegations concern only whether CDCR officials provided notice on the proper form—not whether notice itself was absent, or unappealable to an official other than the one making the initial confiscation decision. (Compl.) Because Martinez fails to make any constitutional claims concerning confiscated mail, these claims must be dismissed.

**B. Martinez's Claim Concerning the Point-of-Origin Stamping Policy Must Be Dismissed Because No Constitutional Claim Is Raised.**

Inmates have a First Amendment right to send mail, *see Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (citing *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989)), but that issue is not before the Court. Rather, Martinez discusses allegations concerning CDCR's policy at PBSP to place point-of-origin stamps atop inmate correspondence. Martinez does not assert that he cannot send mail, or that his outgoing mail is illegible because of the point-of-origin stamp. Any harm to Martinez's outgoing mail is de minimus, and the allegations here do not rise to a First Amendment violation. His claim concerning the point-of-origin stamping policy, therefore, must be dismissed.

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**II.**  
**DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT**  
**BECAUSE THE POINT-OF-ORIGIN STAMPING POLICY**  
**REASONABLY RELATES TO LEGITIMATE PENOLOGICAL**  
**PURPOSES.**

**A. Legal Standard for Summary Judgment.**

Federal Rule of Civil Procedure 56 provides that a summary-judgment motion shall be granted where no genuine issue exists concerning any material fact, and the moving party is entitled to judgment as a matter of law. The Supreme Court has stated that Rule 56(c) mandates summary judgment against a party who fails to sufficiently establish an element essential to the party's case, and on which that party bears the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The non-moving party's failure of proof on an essential element of its claim renders all other facts immaterial. *Id.*

The Supreme Court has made clear that a party opposing a summary-judgment motion must affirmatively show that a dispute about a material fact is genuine, such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). This standard requires that if any evidence produced in opposition to Defendants' motion is "merely colorable" or "not significantly probative," Defendants' motion must be granted. *Id.* at 249; *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288 (9th Cir. 1987). An opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. Plaintiff may not rest on his complaint when opposing a summary-judgment motion. *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

The undisputed evidence here, even when viewed in the light most favorable to Plaintiff, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986), compels resolution of all factual issues solely in Defendants' favor.

**B. Legal Standard for Prison-Mail Claims.**

Although the Supreme Court generally does not consider outgoing inmate mail a serious threat to internal prison order, *Thornburgh v. Abbott*, 490 U.S. 401, 411 (1989), CDCR's stamping policy here is concerned with regulating and eradicating prison mail that is intentionally

1 re-directed back into the prison and which, indeed, very directly affects prison security. (Decl.  
 2 McGuyer ¶¶ 5–6.) Therefore, the *Turner* reasonableness standard must be applied to the point-  
 3 of-origin stamping policy at issue here. See *Thornburgh*, 490 U.S. at 413.

4 In cases involving facial challenges to the constitutionality of a prison regulation that  
 5 infringes on a constitutional right, the relevant inquiry is whether the regulation is reasonably  
 6 related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987). The  
 7 Supreme Court’s four-pronged test to determine whether a prison regulation or policy is  
 8 reasonably related to legitimate penological interests is: (1) whether there is a valid, rational  
 9 connection between the policy and the legitimate governmental interest put forward to justify it;  
 10 (2) whether there are alternative means of exercising the right; (3) whether the impact of  
 11 accommodating the asserted constitutional right will have a significant negative impact on prison  
 12 guards, other inmates, and the allocation of prison resources generally; and (4) whether the policy  
 13 is an exaggerated response to the prison’s concerns. *Turner*, 482 U.S. at 89–90.

14 Where the government identifies a legitimate objective for the regulation under the first  
 15 prong of this test, the burden is on the inmate to refute the presumption that the challenged  
 16 regulation is rationally related to that objective. *Turner*, 482 U.S. at 89; *Mauro v. Arpaio*, 188  
 17 F.3d 1054, 1060 (9th Cir. 1999); *Frost v. Symington*, 197 F.3d 348, 357 (9th Cir. 1999).

18 Under the second prong, the “alternate means test” assesses “only the degree to which a  
 19 regulation impinges upon a prisoner’s asserted right.” *Friedman v. Arizona*, 912 F.2d 328, 332  
 20 (9th Cir. 1990).

21 **C. The Policy Under Which Outgoing SHU Mail Receives a Place-of-Origin Stamp**  
 22 **Meets the *Turner* Test.**

23 **1. The Point-of-Origin Stamping Policy Protects Lives and Prison Security.**

24 The first *Turner* prong—whether there is a valid, rational connection between the policy and  
 25 the legitimate governmental interest put forward to justify the policy—is met here. Prison-gang  
 26 participants like Martinez are housed in the PBSP SHU to isolate them and limit their  
 27 communications, which—if they reached other inmates—could greatly endanger security by, for  
 28 instance, coordinating and commanding assaults on correctional officers and other inmates.

(Decl. McGuyer ¶ 3.) PBSP's SHU consists of twenty-two units, and members of the same prison gang will typically be split among the units to prevent intra-gang communication. (*Id.*)

But SHU inmates were circumventing the prohibition on inmate-to-inmate communications through two methods: (1) addressing correspondence to fictitious destinations, and placing another inmate's address as the return address for the bounced mailing; and (2) using intermediaries outside of prison to re-route all or parts of mail to other inmates. (*Id.* ¶ 5.)

To prevent these prohibited communications, PBSP officials decided to mark every page of outgoing PBSP-SHU mail, along with the envelope itself, with a stamp identifying the mail's point of origin. (*Id.* ¶ 6.) These stamps indicate origin not just from PBSP's SHU, but also from which of the twenty-two PBSP SHU units the mail originated. (*Id.*) The stamp therefore enables correctional officers checking incoming inmate mail to note if any part of a correspondence illicitly originated from an inmate at PBSP SHU, or even from a different unit within the PBSP SHU, cutting off inter-unit PBSP SHU communications as well. (*Id.*) This point-of-origin stamping policy has had a successful impact in stopping prison-gang communication over the approximately eighteen months that the policy has been in place. (*Id.* ¶ 9.)

In sum, CDCR officials identified a life-threatening security risk—intra-prison-gang communications—and effectively neutralized the risk with the point-of-origin stamping policy. Thus, the burden is on Martinez to refute the presumption that the challenged regulation is rationally related to its objective. *Turner*, 482 U.S. at 89; *Mauro*, 188 F.3d at 1060; *Frost*, 197 F.3d at 357.

## **2. Martinez Can Still Send Legible Correspondence.**

Under the second *Turner* prong, Martinez's First Amendment means of correspondence is substantively unaffected by the point-of-origin stamping policy. The point-of-origin stamps are applied in an overt but non-invasive manner. (Decl. McGuyer ¶ 6.) For example, the stamp is in red ink, which contrasts with the prison-issued black ink used in correspondence by inmates. (*Id.* ¶ 7.) To provide further contrast, the red stamps are typically applied in a diagonal angle. (*Id.*) To prevent smearing, the prison procured self-inking stamping tools that apply a uniform and minimal amount of red point-of-origin ink. (*Id.* ¶ 8.) In addition, confidential inmate mail, like



1 legal correspondence, is only stamped on the envelope. (*Id.* ¶ 7.) And to avoid defacing artwork,  
 2 photographs and drawings are only stamped on their back. (*Id.* ¶ 8.)

3 Given that Martinez can still send clear and legible mail despite ubiquitous point-of-origin  
 4 stamps, the Court “should be particularly conscious of the ‘measure of judicial deference owed to  
 5 corrections officials . . . in gauging the validity of the regulation.’” *Turner*, 482 U.S. at 90 (citing  
 6 *Pell v. Procunier*, 417 U.S. 817, 827 (1974)). Because Martinez’s First Amendment right to  
 7 send mail is unhindered by point-of-origin stamps, the second prong under *Turner* is amply met.

8 **3. Disallowing Point-of-Origin Stamps Will Endanger Lives and Prison Security,**  
 9 **and Leave CDCR No Alternative Means of Stopping Prison-Gang**  
**Communications.**

10 The third *Turner* prong is met because no other method of stopping prison-gang  
 11 communications will be as effective as the currently utilized point-of-origin stamping policy.  
 12 Specifically, CDCR had already prohibited unapproved inmate-to-inmate correspondence, but  
 13 CDCR’s methods of scrutiny were still circumvented by prison-gang participants before enacting  
 14 the point-of-origin stamping policy. (*See* Cal. Code Regs. tit. 15, § 3139; Decl. McGuyer ¶ 5.)  
 15 Because disallowing the stamping policy would have a significant “ripple effect” by endangering  
 16 the lives of correctional officers and inmates alike (*see* Decl. McGuyer ¶ 9), the Court should be  
 17 particularly deferential to the carefully enacted security steps taken here by CDCR. *Turner*, 482  
 18 U.S. at 90.

19 **4. Applying Point-of-Origin Stamps Is Not an Exaggerated Response to Life-**  
 20 **Threatening Prison-Gang Communications.**

21 Finally, CDCR’s point-of-origin stamping policy meets the fourth *Turner* prong because  
 22 there is no ready alternative that can defeat circumvention of inmate-to-inmate correspondence.  
 23 Again, CDCR had already prohibited unapproved inmate-to-inmate correspondence before  
 24 enacting the point-of-origin stamping policy, but CDCR’s methods of scrutiny were still  
 25 circumvented by prison-gang participants. (*See* Cal. Code Regs. tit. 15, § 3139; Decl. McGuyer ¶  
 26 5.)

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28 //

**III.**

**DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
AGAINST THE CLAIMS CONCERNING CONFISCATED MAIL  
BECAUSE MARTINEZ RECEIVED NOTICE OF  
CONFISCATION, AND APPEALED THE ISSUE TO PRISON  
OFFICIALS OTHER THAN THE ONES MAKING THE INITIAL  
CONFISCATION DECISIONS.**

Martinez exhausted three administrative grievances concerning confiscation of incoming correspondence, identified by appeal-log numbers C-06-02404, C-07-00012, and C-07-00269. (Roost Decl. ¶¶ 3–5; Compl. 2(a).) He is constitutionally entitled to notice of the withheld mail, *see Frost v. Symington*, 197 F.3d 348, 353–54 (9th Cir. 1999), and to appeal the confiscation decision to an official other than the one who made the initial confiscation decision, *see Krug v. Lutz*, 329 F.3d 692, 697–98 (9th Cir. 2003).

**1. Appeal C-06-02404 Concerned Noticed Confiscation of a Letter, and Was Heard by Prison Officials Other Than Those Making the Initial Confiscation Decision.**

Appeal C-06-02404 concerned not whether Martinez received notice of a confiscated mailing, but whether the decision to confiscate was correct, and whether he was able to sign off on this notice to direct prison officials how he wished the mailing to be disposed. (*See Decl. Roost Ex. B-1–2.*) But Martinez is only constitutionally entitled to notice of withheld mail, which he received. *See Frost* 197 F.3d at 353–54.

Martinez additionally appealed the issue to several prison officials who were not involved in the initial confiscation decision, including PBSP Warden Horel, who reviewed and signed the second-level response personally. (*See Decl. Roost Ex. B-10–11.*) Martinez therefore raises no constitutional claim concerning appeal C-06-02404.

**2. Appeals C-07-00012 and C-07-00269 Each Concerned Noticed Confiscation of a Letter, and Were Heard by Prison Officials Other Than Those Making the Initial Confiscation Decision.**

Appeals C-07-00012 and C-07-00269 primarily concerned whether Martinez is entitled to notice of confiscated mail through a form 1819 rather than 128-B. (*See Decl. Roost Exs. C-1–9, D-1; Compl. Ex. 23–27, 43–44, 46.*) But Martinez is only entitled to notice of confiscated mail. *See Frost*, 197 F.3d at 353–54. The specific form providing this notice is irrelevant, especially where—as here—the form 128-B provides the same information as a form 1819, along with



1 additional information. (*See* Decl. McGuyer ¶ 10.)

2 Martinez's appeals C-07-00012 and C-07-00269 were addressed by several prison officials  
3 who were not involved in the initial confiscation decision, including PBSP Warden Horel, who  
4 reviewed and signed the second-level response personally. (*See* Decl. Roost Exs. C-3-5, D-1;  
5 Compl. Ex. 43-44.) Martinez therefore raises no constitutional claim concerning appeal C-07-  
6 00012 and C-07-00269.

7 **IV.**  
8 **DEFENDANTS MERELY INVOLVED IN THE ADMINISTRATIVE-**  
9 **GRIEVANCE PROCESS ARE NOT LIABLE FOR ANY**  
10 **CONSTITUTIONAL HARM.**

11 Of all the Defendants on whom the Court ordered service—Tilton, Scavetta, Horel, Silva,  
12 Vanderhoofven, McGuyer, Enos, Barneburg, Countess, Milligan, and Estes (Order of Service 3;  
13 Compl. 1(a))—some were named by Martinez merely because they took part in review of his  
14 administrative grievances at issue here. Martinez mentions the following Defendants only in the  
15 context of his administrative-grievance process: Vanderhoofven (compl. 3B ¶ 20), Barneburg  
16 (*id.* ¶ 26, 3C ¶ 36), and Enos (*id.* 3C ¶ 30).

17 Martinez has no constitutional right to a prison administrative-appeal system. *See Mann v.*  
18 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988). A prison official's involvement and actions in  
19 reviewing or investigating a prisoner's administrative appeal cannot serve as the basis for  
20 liability under a § 1983 action. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003);  
21 *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993). Thus, Defendants Vanderhoofven,  
22 Barneburg, and Enos must be dismissed.

23 **V.**  
24 **DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.**

25 **A. The Standard for Finding Qualified Immunity.**

26 The defense of qualified immunity protects "government officials . . . from liability for civil  
27 damages insofar as their conduct does not violate clearly established statutory or constitutional  
28 rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800,  
818 (1982). The rule of qualified immunity "provides ample protection to all but the plainly

1 incompetent or those who knowingly violate the law.” *Burns v. Reed*, 500 U.S. 478, 495 (1991)  
 2 (citation omitted).

3 When a governmental official is accused of a constitutional violation, a particular sequence  
 4 of questions must be considered to determine if qualified immunity exits. *See Saucier v. Katz*,  
 5 533 U.S. 194 (2001). First, a court must ask: “Taken in the light most favorable to the party  
 6 asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional  
 7 right?” *Id.* at 201. If no constitutional right was violated under the alleged facts, the inquiry ends  
 8 and defendants prevail. *Saucier*, 533 U.S. at 204.

9 If, however, a constitutional violation could be construed on a favorable view of the  
 10 opposing party’s submissions, the next step is to determine whether the right was clearly  
 11 established. *Id.* at 201–02. The right’s contours must be so clear that a reasonable official would  
 12 know that his actions violate that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). “The  
 13 relevant, dispositive inquiry in determining whether a right is clearly established is whether it  
 14 would be clear to a reasonable officer that his conduct was unlawful in the situation he  
 15 confronted.” *Saucier*, 533 U.S. at 202. Officers can make mistakes about the facts requiring  
 16 confiscation of mail, or mistakes about the constitutionality of a new policy designed to protect  
 17 lives and prison security, yet they will still be protected by qualified immunity as long as they  
 18 acted reasonably under the circumstances. *Id.* at 205–06.

19 **B. Martinez Has Not Alleged Violation of Any Constitutional Right.**

20 The first step under *Saucier* is to determine whether, taken in the light most favorable to the  
 21 party asserting the inquiry, the facts alleged show the officer’s conduct violated a constitutional  
 22 right. *Saucier*, 533 U.S. 194. Defendants recognize that inmates have a First Amendment right  
 23 to send and receive mail, and to appeal confiscation of mail to an official other than the one  
 24 making the confiscation decision. As discussed above, however, Martinez has failed to show  
 25 how these rights were violated in this action. Under *Saucier*, this Court’s inquiry should end  
 26 here.

27 //

28 //

**C. Defendants Are Entitled to Qualified Immunity Because It Would Not Have Been Clear to Reasonable Officials that Their Conduct Was Unlawful.**

Even were Martinez's allegations to establish a constitutional violation, Defendants would not clearly have known that such conduct was unlawful. *Saucier*, 533 U.S. at 202. Officers can make mistakes about the facts requiring a response, yet they will still be protected by qualified immunity as long as they acted reasonably under the circumstances. *Id.* at 205–06.

Even assuming that the policies and regulations at issue are unconstitutional, and also that Defendants' conduct violated Martinez's First Amendment rights, Defendants are still entitled to qualified immunity because it would not have been clear to a reasonable official in any of Defendants' situations that the conduct at issue was clearly unlawful.

To begin with, Defendants Vanderhoofven, Barneburg, and Enos are only named in this suit because of their work in reviewing Martinez's administrative grievances. (See Argument IV above.) There is no constitutional right to a prison administrative appeal system. See *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). And a prison official's involvement and actions in reviewing or investigating a prisoner's administrative appeal cannot serve as the basis for liability under a § 1983 action. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993). With the law so established, it is impossible to say that a reasonable official in any of Defendants' positions would have known that mere involvement in reviewing Martinez's administrative grievances was unlawful.

Further, the remaining Defendants, responsible for confiscating three letters addressed to Martinez or for designing and employing the point-of-origin policy, all had their decisionmaking and rationale reviewed through CDCR's four-level administrative-grievance system to exhaustion. And each grievance was ultimately denied at the Director's Level of review, after a full record was established before CDCR and interviews were conducted. (Compl. Ex. 14, 26, 40, 46.) Martinez fails to point out where a reasonable official in any of Defendants' positions would have thought they were clearly engaged in unlawful conduct violating an inmate's constitutional rights.

//

**Conclusion**

Martinez fails to raise any First Amendment claim in his complaint and, as such, this suit must be dismissed.

Even if a First Amendment claim could be construed from the complaint, Martinez was not deprived of any First Amendment rights because the point-of-origin stamping policy at issue serves legitimate penological interests. And Martinez's claims revolving around confiscated mail concern receipt of confiscation notice on the wrong form—not whether he failed to receive notice at all, or whether he could not appeal the decision to alternative prison officials.

Lastly, in accord with the above, Defendants are entitled to qualified immunity because they did not violate Martinez's First Amendment rights—or, if they arguably somehow did, a reasonable official in Defendants' position could have thought that their conduct was lawful.

//

//

1 Accordingly, Defendants respectfully request that this Court grant Defendants' motion to  
2 dismiss or, in the alternative, their motion for summary judgment, and dismiss the entire action  
3 as to all Defendants.

4  
5 Dated: May 20, 2008

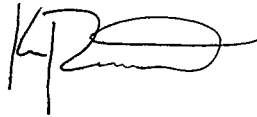
6 Respectfully submitted,

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9 FRANCES T. GRUNDER  
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15 Vanderhoofven, McGuyer, Enos, Barneburg, Countess, Milligan,  
16 and Estes

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19 SF2008400483

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Martinez v. Tilton, et al.**

Case No.: **C 07-4684 CRB (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 20, 2008, I served the attached

**DEFENDANTS' NOTICE OF MOTIONS AND MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT**

**DECLARATION OF KENNETH T. ROOST IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
(WITH EXHIBITS)**

**DECLARATION OF K. MCGUYER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
(WITH EXHIBITS)**

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Juan Angel Martinez, Jr.  
H-93376  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA 95532  
Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 20, 2008**, at San Francisco, California.

M. Xiang

Declarant



Signature